

May 10, 2007

Ms. Mary McCoy  
908 West Street  
P.O. Box 263  
Bethel, DE 19931

**RE: Freedom of Information Act Complaint  
Against Town of Bethel**

Dear Ms. McCoy:

On March 29, 2007, our Office received your complaint alleging that the Town of Bethel ("the Town") violated the open meeting requirements of the Freedom of Information Act, 29 *Del. C. Ch. 100* ("FOIA"), by holding a public hearing on January 9, 2007 to remove you as a member of the Planning Commission without your consent that the hearing be open to the public.

By letter dated March 30, 2007, our Office asked the Town to respond to your complaint in writing by April 9, 2007. We received the Town's response on April 9, 2007.

The Town provided us with a copy of an undated letter from the Secretary of the Town Council advising you that the President of the Council had received "a letter from a Town Council member asking that you be removed from the Planning Commission. There will be a public hearing on this matter the night of the scheduled Town meeting November 9<sup>th</sup> 2006." The letter further advised: "At this meeting the public will be allowed to speak for or against your removal and after all comments you will be allowed to respond. Then the Town Council president will declare that

Ms. Mary McCoy  
May 10, 2007  
Page 2

the public hearing portion of the meeting is concluded and at that time the Town Council will deliberate and vote on the motion."

According to your complaint, the "public hearing scheduled for Nov. 9, 2006 was subsequently continued to December 5, 2006" and then to January 9, 2007 with the hearing finally "being held on February 6, 2007." The Town provided us with a copy of the agenda for the February 6, 2007 meeting which listed for public discussion, "Public Hearing pursuant to section 813(b) of the Bethel Town Code for the removal of Mary McCoy from the Planning Commission for Cause."

The minutes of the February 6, 2007 meeting reflect that:

The meeting was turned over to Mr. Richard Berl the lawyer the town was using to bring the charges. He stated that the issue for the public hearing was whether Ms. McCoy should be removed from her position as President of the planning commission of the Town of Bethel. He then read the allegations for the hearing as well as correspondence that were entered in the record. He then turned the mike over for public comment. Those who spoke were: Jack Chadwick, Tom McCoy, Dewon Chadwick, Pat Kough, Sandy Wood, George Anderson, Marge Waters, Cathy Layfield. After all had spoken, Mr. Berl then closed the public hearing and turned it back over to the Council. Councilman Kevin Phillips also made a comment. A motion was then made by Councilman Bill Rutledge to hold the vote until the March meeting. Seconded by Councilman Kevin Phillips it was voted on and passed with one nay.

### **RELEVANT STATUTES**

FOIA requires that "[e]very meeting of all public bodies shall be open to the public except those closed" for executive session as authorized by statute. 29 *Del. C.* §10004(a).

FOIA authorizes a public body to meet in executive session to discuss "an individual citizen's qualifications to hold a job or pursue training unless the citizen requests that such a meeting be open." *Id.* §10004(b)(1).

### **LEGAL ANALYSIS**

You contend that FOIA required your consent for the Town Council to discuss removing you from the Planning Commission because such discussion involved your qualifications to hold the job. The Town responds that the Council did not "go into an executive session during the February 6, 2007 Town meeting. Since this matter was not conducted in an executive session, [FOIA's limitations on executive sessions] are not germane to this meeting."

FOIA authorizes a public body to meet privately in executive session for one of nine purposes, including to discuss an individual's "qualifications to hold a job." 29 *Del. C.* §10004(b)(1). Even if FOIA authorizes a public body to meet in executive session, FOIA does not ***require*** a public body to meet in private. A public body may discuss matters authorized for executive session in public if it chooses.

When the matter to be discussed is an individual's qualifications to hold a job, FOIA only gives the individual the right to have the discussion in public. FOIA does not give the individual the corresponding right, however, to have the discussion closed to the public.

Ms. Mary McCoy  
May 10, 2007  
Page 4

Our Office determines that the Town did not violate the open meeting requirements of FOIA by holding a public hearing on February 6, 2007 to discuss removing you from the Planning Commission. FOIA authorized the Town to discuss your qualifications to hold the job in executive session, but FOIA did not require the Town to do so. FOIA only gave you the right to have the discussion in public as opposed to private session. FOIA did not give you the right to require the Council's hearing be closed to the public.

### **CONCLUSION**

For the foregoing reasons, our Office determines that the Town did not violate the open meeting requirements of FOIA by meeting in public on February 6, 2007 to discuss your qualifications to hold a job on the Planning Commission.

Very truly yours,

W. Michael Tupman, Esquire  
Deputy Attorney General

APPROVED

---

Lawrence W. Lewis, Esquire  
State Solicitor

cc: The Honorable Joseph R. Biden, III  
Attorney General

Richard S. Gebelein, Esquire  
Chief Deputy Attorney General

Keith R. Brady, Esquire  
Assistant State Solicitor

John E. Tarburton, Esquire  
Town Attorney

Mary Ann Haley  
Opinion Coordinator